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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRAIG FERGUSON,

Defendant.

Case No. 5:23-cv-2286-MWF-SP

**UNITED STATES' NOTICE OF
MOTION AND MOTION FOR
DEFAULT JUDGMENT,
DECLARATORY RELIEF,
EJECTMENT, AND DAMAGES;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Fed. R. Civ. P. 55]

Date: June 3, 2024

Time: 10:00 AM

Courtroom 5A

Judge: Hon. Michael W. Fitzgerald

1 **TO THE HONORABLE COURT AND ALL PARTIES:**

2 **PLEASE TAKE NOTICE** that on June 3, 2024, at 10:00 AM, or as soon
3 thereafter as this matter may be heard in the above-entitled Court, the United States
4 of America (“United States”), as trustee for the Colorado River Indian Tribes
5 (“CRIT”), shall move the Court for default judgment pursuant to Fed. R. Civ. P.
6 55(b). Specifically, the United States moves for default judgment: (1) declaring
7 that Defendant is committing a continuing trespass on property the United States
8 owns and holds in trust for the benefit of CRIT, situated within the boundaries of
9 the Colorado River Indian Reservation; (2) ejecting Defendant and his personal
10 property from that trust property; (3) ordering Defendant to pay \$54,559 in
11 principal trespass damages, \$5,834 in prejudgment interest, and postjudgment
12 interest compounded annually; and (4) allowing the United States to seek
13 restoration damages, if necessary, after CRIT takes possession of the property.

14 The United States’ Motion is based on this Notice of Motion and Motion for
15 Default Judgment, the attached Memorandum of Points and Authorities (with
16 supporting exhibits), and any further material and argument presented to the Court
17 in subsequent briefing or at the time of the hearing. A proposed order is filed
18 concurrently herewith.

1 DATED: April 24, 2024

2 Respectfully submitted,

3 TODD KIM

4 Assistant Attorney General

5 /s/ Cody McBride

6 CODY MCBRIDE

7 REBECCA M. ROSS

8 United States Department of Justice

9 Environment & Natural Resources Division

Indian Resources Section

10 OF COUNSEL:

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12 United States Department of the Interior

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On November 6, 2023, the United States of America (“United States”), as trustee for the Colorado River Indian Tribes (“CRIT”), filed the Complaint against Defendant Craig Ferguson, alleging that Defendant has trespassed and continues to trespass on land the United States owns and holds in trust for CRIT, situated within the boundaries of the Colorado River Indian Reservation (“Reservation”).¹ ECF No. 1. Because Defendant failed to answer or otherwise respond to the Complaint, the United States requested that the Clerk of the Court enter default against Defendant pursuant to Fed. R. Civ. P. 55(a). ECF No. 13. On January 25, 2024, the Clerk entered default against Defendant. ECF No. 14.

Now, pursuant to Fed. R. Civ. P. 55(b), the United States moves the Court for default judgment. Consistent with the United States’ Complaint and the proposed order provided herewith, the United States moves for default judgment: (1) declaring that Defendant is committing a continuing trespass on the Subject Property; (2) ejecting Defendant and his personal property from the Subject Property; (3) ordering Defendant to pay \$54,559 in principal trespass damages, \$5,834 in prejudgment interest, and postjudgment interest compounded annually; and (4) allowing the United States to seek restoration damages, if necessary, after CRIT takes possession of the Subject Property.²

¹ Defendant unlawfully occupies Lot 17 of the McCoy Subdivision, which is located within Section 11, Township 4 South, Range 23 East, of the San Bernadino Base and Meridian, a short distance from Blythe, in Riverside County, California (“Subject Property”). ECF No. 1 at 3 ¶ 7.

² As detailed in the proposed order, the United States Marshals Service will assist with ejectment of Defendant and his personal property from the Subject Property. In addition, until Defendant is ejected from and CRIT takes possession of the Subject Property, the costs of restoring the Subject Property to its natural state

II. FACTUAL BACKGROUND

CRIT is a federally recognized Indian tribe residing on the Reservation, which Congress established by the Act of March 3, 1865, 13 Stat. 541, 559. ECF No. 1, ¶ 8. The Reservation straddles the Colorado River (“River”), with land in both Arizona and California. *Id.* In 1964, Congress authorized the Secretary of the Interior to approve leases of land on the Reservation. *Id.* at ¶ 9; Pub. L. 88-302, 78 Stat. 188, 189 (Apr. 30, 1964) (“1964 Act”).³

On September 21, 1979, CRIT leased the Subject Property to Thomas Shea, with approval from the Bureau of Indian Affairs (“BIA”). ECF No. 1, ¶ 18; ECF No. 1-3, Permit No. WB-199 (R) (“Permit”). Defendant accepted assignment of the Permit and its requirements on May 29, 1986. ECF No. 1, ¶ 31; ECF No. 1-5, Assignment of Permit. Both BIA and CRIT approved that assignment to Defendant. *Id.* However, between 1988 and 1993, Defendant repeatedly failed to pay rent for the Subject Property on time or made only partial payments. ECF No. 1, ¶¶ 32–39. By 1996, Defendant owed \$3,600 in back rent plus interest. *Id.* at ¶ 40. Thus, on August 9, 1996, BIA notified Defendant that the Permit was “declared forfeited and terminated effective immediately,” pursuant to Article 18 of the Permit, for failure to pay full rent for 1995 and 1996. *Id.* at ¶ 40; ECF 1-11, Letter from BIA to Defendant (Aug. 9, 1996); *see* ECF No. 1-3 at 11.

cannot be determined. Accordingly, the United States requests an opportunity to seek restoration damages after CRIT takes possession of the Subject Property.

³ The Reservation was originally located entirely on the eastern (Arizona) side of the River but was subsequently expanded by four Executive Orders. ECF No. 1, ¶ 8. After the 1964 Act, in which Congress held in abeyance the Secretary’s leasing authority on California lands until “determined to be within the reservation,” the Secretary determined that those lands, including the Subject Property, are within the Reservation. *Id.* at ¶¶ 9–11, 13. Accordingly, in the 1970s, BIA began approving permits to occupy the Reservation on the California side of the River. *Id.* at ¶ 12, 14.

1 Despite BIA's termination of the Permit, Defendant did not vacate the
2 Subject Property or pay back rent as BIA demanded. ECF No. 1, ¶ 41. Instead,
3 Defendant continued to occupy and use the Subject Property without authorization
4 or permission. *Id.*

5 Since 1996, CRIT has repeatedly tried to resolve Defendant's trespass
6 without litigation. On July 1, 2010, CRIT posted a notice of trespass on the Subject
7 Property, demanding that the occupant vacate the property. ECF No. 1, ¶ 42. On
8 August 1, 2012, CRIT notified Defendant that, to continue occupying the Subject
9 Property, he would need to enter a new lease and pay the back rent owed (with
10 default interest waived). *Id.* at ¶ 43. Alternatively, CRIT would forgive all back
11 rent and interest owed if Defendant would "walk away" and turn over all
12 improvements on the Subject Property to CRIT. *Id.* On April 9, 2013, CRIT again
13 offered solutions to resolve Defendant's trespass. *Id.* at ¶ 45. Yet Defendant did not
14 enter a new lease or walk away but continued to occupy and use the Subject
15 Property. *Id.* at ¶ 44. Defendant continues to occupy and use the Subject Property
16 today. *Id.* at ¶¶ 2, 7, 47–48, 59, 62–64.

17 **III. PROCEDURAL BACKGROUND**

18 The United States filed the Complaint against Defendant on November 6,
19 2023. ECF No. 1. The Clerk of the Court issued the Summons in a Civil Action on
20 November 7, 2023. ECF No. 9. On December 11, 2023, Richard Dewalt of ABC
21 Legal Services, LLC personally served the Summons, Complaint, and other
22 necessary documents on Defendant at his place of business in Garden Grove,
23 California, pursuant to Fed. R. Civ. P. 4. *See* ECF No. 11.

24 Defendant's response to the Complaint was due on January 2, 2024. ECF
25 Nos. 11, 12. Defendant failed to answer or otherwise respond. Accordingly, on
26 January 24, 2024, the United States requested that the Clerk enter default against
27
28

1 Defendant pursuant to Fed. R. Civ. P. 55(a). ECF No. 13. The Clerk entered
2 default on January 25, 2024. ECF No. 14.

3 On January 31, 2024, the Court issued an *Order to Show Cause Re Default*
4 *Judgment* (“Order to Show Cause”), setting a hearing on the Order to Show Cause
5 for March 4, 2024. ECF No. 15. However, at the United States’ request, the Court
6 continued that hearing until April 29, 2024, to allow additional time to file this
7 *Motion for Default Judgment* (“Motion”). See ECF Nos. 16 (*Response to Order to*
8 *Show Cause and Request for Continuance of Hearing*), 17 (*Scheduling Notice and*
9 *Order*). Pursuant to Fed. R. Civ. P. 5 and L.R. 5-3.2.1, the United States properly
10 served on Defendant its *Request for Entry of Default* on January 24, 2024 (ECF
11 No. 13 at 4), and its *Response to Order to Show Cause and Request for*
12 *Continuance of Hearing* on February 7, 2024 (ECF No. 16 at 5). The United States
13 served both filings at the address at which Defendant was personally served the
14 Summons and Complaint. See ECF No. 11. This Motion was also properly served
15 on Defendant at that same address. See *infra*, Certificate of Service.

16 Lastly, with this Motion, counsel for the United States submits a declaration
17 establishing that the United States has met all procedural requirements of Fed. R.
18 Civ. P. 55 and L.R. 55-1. See Ex. 1, Decl. of Cody McBride.

19 IV. ARGUMENT

20 Default judgment against Defendant is warranted in this case. Fed. R. Civ. P.
21 55(b) permits plaintiffs to seek default judgment against defendants who “fail[] to
22 plead or otherwise defend” against well-pleaded allegations. Fed. R. Civ. P. 55(b);
23 *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002). The
24 Complaint and its supporting exhibits document Defendant’s intentional and
25 ongoing multi-decade trespass on the Subject Property, allegations that Defendant
26 has not appeared in this case to refute.

1 The Court should exercise its discretion to enter default judgment against
2 Defendant. Defendant was properly served with the Complaint and other
3 documents, and this Court has the requisite jurisdiction to grant default judgment
4 against him. *See* Section IV.A. In addition, the factors that courts in the Ninth
5 Circuit consider when granting default judgment clearly weigh in favor of doing so
6 in this case. *See* Section IV.B. Lastly, the remedies sought by the United States are
7 proper for default judgment. *See* Section IV.C. The Court should therefore grant
8 the Motion.

9 **A. Defendant was Properly Served, and the Court Possesses the**
10 **Requisite Jurisdiction to Grant the Motion.**

11 When considering whether to grant default judgment, the reviewing court
12 must first confirm that service was proper and that it has the requisite jurisdiction
13 to grant such relief. *See In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999); *Mason v.*
14 *Genisco Tech. Corp.*, 960 F.2d 849, 851–54 (9th Cir. 1992). Here, these threshold
15 requirements are met.

16 On December 11, 2023, the United States had Defendant personally served
17 with the Complaint, Summons, and other documents. ECF No. 11. Subsequently,
18 the United States served on Defendant its *Request for Entry of Default* (ECF No.
19 13 at 4), *Request for Continuance of Hearing* (ECF No. 16 at 5), and this Motion
20 (Certificate of Service, *infra*). Service was done consistent with the Federal Rules
21 of Civil Procedure and this Court’s Local Rules, which confirms that service was
22 adequate for default judgment. *See, e.g., Craneveyor Corp. v. AMK Express Inc.*,
23 No. 16-CV-6049, 2017 WL 89553, *3 (C.D. Cal. Jan. 10, 2017); *GS Holistic, LLC*
24 *v. Ravens Smoke Shop, Inc.*, No. 22-CV-7199, 2023 WL 9319242, *2 (C.D. Cal.
25 Dec. 1, 2023) (requiring as a matter of discretion that motion for default judgment
26 be served through method “at least reasonably likely to provide notice of the
27 motion to the Defendant(s)").
28

1 Additionally, the Court has the requisite jurisdiction to grant default
2 judgment against Defendant. The Court undoubtedly maintains subject matter
3 jurisdiction over this case, as it has been brought by the United States, *see* 28
4 U.S.C. § 1345, and it implicates the Court’s federal question jurisdiction, *see* 28
5 U.S.C. § 1331. *See United States v. Milner*, 583 F.3d 1174, 1182–83 (9th Cir.
6 2009) (“Federal common law governs an action for trespass on Indian lands.”).
7 Moreover, the Court can properly assert personal jurisdiction over Defendant.
8 Defendant not only resides within the jurisdictional boundary of the Central
9 District of California, the Complaint and its supporting exhibits document his
10 historic and ongoing trespass on the Subject Property, also located within this
11 District. Thus, there is no reasonable dispute as to whether the Court has
12 jurisdiction to grant default judgment against Defendant.

13 **B. The United States is Entitled to Default Judgment in this Case.**

14 Default judgment may be entered against a defendant who fails to respond to
15 a complaint within the time required. *See* Fed. R. Civ. P. 55. Default judgment is a
16 two-step process. The Clerk of the Court must enter default. Fed. R. Civ. P. 55(a).
17 And after entry of default, the moving party must request default judgment from
18 the Court. Fed. R. Civ. P. 55(b).

19 Having received the Clerk’s entry of default under Fed. R. Civ. P. 55(a), the
20 United States now moves for default judgment under Fed. R. Civ. P. 55(b). In
21 deciding whether default judgment is warranted under Rule 55(b), courts in the
22 Ninth Circuit weigh the following factors:

23 (1) the possibility of prejudice to the plaintiff, (2) the merits of
24 plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4)
25 the sum of money at stake in the action, (5) the possibility of a dispute
26 concerning material facts, (6) whether the default was due to
27
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excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). Except for the policy favoring a decision on the merits, which is not dispositive, each of the *Eitel* factors weigh in favor of granting default judgment here.

1. *Plaintiff will be prejudiced if default judgment is not entered.*

Where a defendant’s failure to participate leaves plaintiff “without other recourse for recovery,” the plaintiff will be prejudiced unless default judgment is granted. *Elektra Ent. Grp., Inc. v. Crawford*, 226 F.R.D. 388, 392 (C.D. Cal. 2005); *see also PepsiCo, Inc.*, 238 F. Supp. 2d at 1177 (“If Plaintiffs’ motion for default judgment is not granted, Plaintiffs will likely be without other recourse for recovery.”). Here, because Defendant has refused to participate, failure to enter default judgment will prejudice the United States by denying its right to judicial resolution without other recourse for recovery. For decades, Defendant has resisted CRIT’s and BIA’s attempts to remedy his trespass. Defendant’s continuing, willful trespass on the Subject Property can only be remedied through Defendant’s ejectment and his payment of damages. The first *Eitel* factor therefore weighs in favor of default judgment. *See, e.g., GS Holistic, LLC*, 2023 WL 9319242, *3.

2. *Plaintiff’s claims have merit, and the Complaint is sufficient.*

Under the second and third *Eitel* factors, a plaintiff’s claims have merit, and the Complaint is sufficient, if the plaintiff adequately pleaded a claim for relief on which it may recover. *PepsiCo, Inc.*, 238 F. Supp. 2d at 1175–76 (citing *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978)). A complaint satisfies this standard and is “well-pleaded” when the claims “cross the line from the conceivable to plausible.” *See Waters v. Mitchell*, 600 F. Supp. 3d 1177, 1183 (W.D. Wash. 2022) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009)). Here, the United States

adequately pleaded claims of trespass and ejectment against Defendant, which entitles the United States to the relief it requests in the Complaint.

“Federal common law governs an action for trespass on Indian lands.” *Milner*, 583 F.3d at 1182. Federal common-law trespass is “the intentional use of property of another without authorization and without privilege,” and the only intent required is intent to be on the land. *United States v. Imperial Irr. Dist.*, 799 F. Supp. 1052, 1059 (S.D. Cal. 1992); *see Milner*, 583 F.3d at 1182. The remedies for trespass on Indian lands include declaratory relief, ejectment, and damages. *United States v. Pend Oreille Pub. Util. Dist. No. 1*, 28 F.3d 1544, 1549 n.8 (9th Cir. 1994). In addition to being a remedy for trespass, ejectment is a separate cause of action under federal common law that can protect Indian lands from trespass. *Pend Oreille*, 28 F.3d at 1549 n.8; *Marsh v. Brooks*, 49 U.S. 223, 232 (1850) (“That an action of ejectment could be maintained on an Indian right to occupancy and use, is not open to question.”); 25 AM. JUR. 2d *Ejectment* § 1 (2024) (“Ejectment is an action at law . . . filed by a plaintiff who does not possess the land but has the right to possess it against a defendant who has actual possession.”); *see also United States v. Osterlund*, 671 F.2d 1267, 1268 (10th Cir. 1982) (ordering trespasser to remove all structures, improvements, and personal property because, “[o]nce it was established that [defendant] was a trespasser on national forest land, the government had the right to enjoin his continued occupancy and use of the land”).⁴

As pleaded in the Complaint, on August 9, 1996, BIA terminated the Permit that authorized Defendant to occupy and use the Subject Property. ECF No. 1, ¶ 40. Since then, Defendant has not had a valid lease or permit for the Subject

⁴ BIA regulations governing the Subject Property are consistent with these federal common law principles. *See* ECF No. 1, ¶¶ 51–54 (citing 25 C.F.R. §§ 162.003, 162.005, 162.371).

1 Property. *Id.* at ¶ 55. And Defendant does not have an ownership interest in the
 2 Subject Property. *Id.* at ¶¶ 1, 55. Both BIA and CRIT have repeatedly notified
 3 Defendant that he is in trespass and ordered that he vacate the Subject Property or
 4 enter a new lease, but Defendant has refused. *Id.* at ¶¶ 42–46, 57, 61. Instead,
 5 Defendant continues to occupy and use the Subject Property, depriving the United
 6 States and CRIT of their right to do so. *Id.* at ¶¶ 2, 47–48.

7 Under federal common law, the United States’ allegations setting out
 8 Defendant’s willful, unauthorized, and continuing occupancy and use of the
 9 Subject Property constitute well-pleaded claims of trespass and ejectment for
 10 which the United States may recover. *Id.* at ¶¶ 55, 57–59, 61–64. Thus, the second
 11 and third *Eitel* factors weigh in favor of default judgment.

12 *3. Damages sought are reasonable in relation to Defendant’s*
 13 *conduct.*

14 Under the fourth *Eitel* factor, the Court must consider whether the sum of
 15 money at stake is reasonable in relation to the seriousness of defendant’s conduct.
 16 *See PepsiCo, Inc.*, 238 F. Supp. 2d at 1176–77; *see also Bd. of Trs. v. Core*
 17 *Concrete Const., Inc.*, No. 11-CV-2532, 2012 WL 380304, at *4 (N.D. Cal. Jan.
 18 17, 2012) (“[W]here the sum of money at stake is tailored to the specific
 19 misconduct of the defendant, default judgment may be appropriate”).

20 Here, the amount of damages sought is reasonable in relation to Defendant’s
 21 conduct. At this time, the United States seeks \$54,559 in principal trespass
 22 damages, \$5,834 in prejudgment interest, and postjudgment interest compounded
 23 annually. Attached to this Motion, the United States provides a declaration from an
 24 expert who calculates the amount of principal trespass damages and prejudgment
 25 interest using the applicable standards under federal law. Ex. 2, Decl. of Walter
 26 Carney (“Carney Decl.”). Accordingly, the amount requested in this Motion is
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1 reasonable in relation to Defendant's conduct, and the fourth *Eitel* factor supports
2 default judgment.

3 a. Principal trespass damages

4 Trespass damages include all injuries proximately flowing from the trespass.
5 *Hammond v. Cty. of Madera*, 859 F.2d 797, 804 (9th Cir. 1988), *rev'd on other*
6 *grounds*, *Wood v. Ostrander*, 851 F.2d 1212 (9th Cir. 1988)). Principally, the
7 trespasser is liable for the fair market rental value of the property, assuming the
8 property's highest and best use. *Id.*; *Imperial Irr. Dist.*, 799 F. Supp. at 1066; *see*
9 *also* 25 C.F.R. 162.003 (defining "fair market rental" as "the amount of rental
10 income that a leased tract of Indian land would most probably command in an open
11 and competitive market, or as determined by competitive bidding"). For a
12 continuing trespass claim commenced by the United States on behalf of an Indian
13 tribe, damages may date back 6 years and 90 days from the date of filing the
14 complaint. 28 U.S.C. § 2415(b).

15 Based on Defendant's continuing trespass over the 6 years and 90 days prior
16 to the Complaint, the United States seeks principal damages in the amount of
17 \$54,559. To calculate the fair market rental value of the Subject Property, the
18 United States engaged an expert appraiser, Walter Carney. *See* Ex. 2, Carney Decl.
19 Mr. Carney determined that the Subject Property's highest and best use is as a
20 residential lot. *Id.* at ¶ 4. And based on the Subject Property's highest and best use,
21 Mr. Carney used a "comparative analysis" to calculate the fair market rental value
22 of the Subject Property for the 6 years and 90 days prior to the Complaint, *i.e.*,
23 from August 10, 2017, to November 6, 2023. *Id.* at ¶ 5. Under the comparative
24 analysis, an appraiser considers rents of comparable properties in the competitive
25 market area. *Id.* Mr. Carney considered rents charged by CRIT to lease comparable
26 riverfront properties on the Reservation during the time at issue. *Id.*

1 The amount of principal trespass damages calculated by Mr. Carney is
2 reasonable in relation to Defendant's conduct because that conduct deprived CRIT
3 of the fair market rental value of the Subject Property. Had Defendant vacated the
4 Subject Property when ordered to, CRIT could have leased it at the rate charged for
5 riverfront properties, which is equivalent to the fair market rental value calculated
6 by Mr. Carney. Thus, principal trespass damages in the amount of \$54,559 fairly
7 and reasonably compensates the United States, on behalf of CRIT, for Defendant's
8 trespass over the 6 years and 90 days prior to the Complaint.

9 b. Prejudgment interest

10 The Court should also award the United States prejudgment interest. In
11 federal courts, prejudgment interest is widely recognized "as a means to make the
12 plaintiff whole against a dilatory defendant" and compensate a plaintiff for the
13 "time value" of money. *Pend Orielle*, 135 F.3d at 613. Not awarding prejudgment
14 interest would effectively grant defendants "an interest free loan" and "encourage
15 delay in payment" of judgments. *See Monsanto Co. v. Hodel*, 827 F.2d 483, 485
16 (9th Cir. 1987). This remedy "is intended to cover the lost investment potential of
17 funds . . . from the time of entitlement to the date of judgment." *Letvinuk v. Aetna*
18 *Life Ins. Co.*, No. 06-CV-2831, 2011 WL 6056878, at *3 (C.D. Cal. Dec. 2, 2011).

19 Here, prejudgment interest should be awarded to compensate the United
20 States, on behalf of CRIT, for the time value of money lost from the inability to
21 collect rent on the Subject Property over the 6 years and 90 days prior to the
22 Complaint. That money could have been used for government services, economic
23 development, and investment in the community. Due to Defendant's trespass,
24 CRIT has been deprived of multiple years of revenue, development, and
25 investment opportunity. Thus, awarding prejudgment interest is reasonable in
26 relation to Defendant's conduct.

Pursuant to 28 U.S.C. § 1961(a),⁵ prejudgment interest is calculated as the “weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.” *See In re Nucorp Energy, Inc.*, 902 F.2d 729, 734 (9th Cir. 1990). And under § 1961(b), *compound* prejudgment interest is standard. *See Termine v. William S. Hart Union High School Dist.*, 288 F. App’x 360, 363 (9th Cir. 2008); *Pend Oreille*, 135 F.3d at 613 (awarding compound prejudgment interest at 90 percent of prime rate). Based on the formula provided by § 1961(a), Mr. Carney calculated that \$5,834 in compounded prejudgment interest accrued between August 10, 2017, and April 12, 2024. Carney Decl. at 6. Accordingly, the Court should award the United States, on behalf of CRIT, \$5,834 in prejudgment interest.⁶

c. Postjudgment interest

Postjudgment interest is mandatory. *Air Separation, Inc. v. Underwriters at Lloyd’s of London*, 45 F.3d 288, 290 (9th Cir. 1995). Like prejudgment interest, the application of postjudgment interest compensates a party for the time value of unpaid damages. *Northrop Corp. v. Triad Intern. Marketing*, 842 F.2d 1154, 1156 (9th Cir. 1988). In addition, the accrual of postjudgment interest ensures that a

⁵ Alternatively, the Court has discretion to award prejudgment interest at a different rate in consideration of the equities of a particular case. *In re Nucorp Energy, Inc.*, 902 F.2d at 734; *see Blankenship v. Liberty Life Assur. Co. of Bos.*, 486 F.3d 620, 628 (9th Cir. 2007) (awarding prejudgment interest at a rate of 10 percent compounded annually).

⁶ Mr. Carney calculated the amount of prejudgment interest that accrued until April 12, 2024, because that is the date the Federal Reserve most recently published the weekly average 1-year constant maturity Treasury yield. Carney Decl. at 6. Once judgment is entered, the United States requests an opportunity to seek, consistent with § 1961(a), the amount of compounded prejudgment interest that accrues after April 12, 2024, up to the calendar week preceding the date of the judgment.

1 defendant is not incentivized to delay satisfaction of a judgment, requiring the
2 plaintiff to “bear the cost from the loss of the use of money.” *Air Separation Inc.*,
3 45 F.3d at 291. Postjudgment interest begins accruing on the entire judgment
4 amount, including prejudgment interest, on the date judgment is entered, *id.* at
5 290–91, and it is to be calculated “daily to the date of payment, [] compounded
6 annually,” pursuant to 28 U.S.C. § 1961(b).

7 The United States is entitled to postjudgment interest compounded annually
8 on all damages awarded. Postjudgment interest is particularly necessary here given
9 Defendant’s demonstrated disregard for BIA’s and CRIT’s prior demands for
10 payment of back rent. And postjudgment interest will compensate the United
11 States for the loss of funds it is owed until the judgment is satisfied. Thus,
12 awarding postjudgment interest is reasonable in relation to Defendant’s conduct.

13 d. Restoration damages

14 Lastly, the United States requests an opportunity to seek restoration
15 damages, if necessary, after CRIT takes possession of the Subject Property. In
16 addition to the fair market rental value of the property, the party suing for trespass
17 is “entitled to damages in the form of restitution and abatement costs.” *United*
18 *States v. Torlaw Realty, Inc.*, 483 F. Supp. 2d 967, 974 (C.D. Cal. 2007) (providing
19 damages for removing waste and cleaning up the trespass site), *aff’d*, 348 F. App’x
20 213 (9th Cir. 2009). Such damages include the reasonable costs of removing
21 structures and restoring the land to its natural state. *See United States v. Brunskill*,
22 792 F.2d 938, 940 & n.1 (9th Cir. 1986) (ordering trespasser to remove structures
23 and restore the land to its natural state, or allowing the United States to do so and
24 assess costs to defendant); *United States v. McClure*, No. 04-CV-3047, 2006 WL
25 2818354, *5–6 (E.D. Wash. Sept. 26, 2006) (same).

26 Here, restoration damages cannot be calculated with certainty until
27 Defendant is ejected and CRIT takes possession of the Subject Property. As proof
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1 of potential restoration damages, the United States provides a declaration from an
2 employee of the CRIT Environmental Protection Office attesting to the potential
3 costs of restoring the Subject Property to its natural state. Exhibit 3, Decl. of
4 Guthrie Dick (“Dick Decl.”). Potential costs may include demolishing and
5 removing the structures that Defendant placed on the Subject Property if those
6 structures have been left in a significantly degraded state. *Id.* at ¶ 4. If demolition
7 and removal are necessary, the potential costs of doing so may amount to
8 \$115,780.44. *Id.* at ¶ 5. However, until CRIT takes possession of the Subject
9 Property and has access to the inside of the structures, it cannot be determined
10 whether demolition and removal of the structures are necessary, or whether other
11 remediation measures, either in lieu of or in addition to demolition and removal,
12 will be needed. *Id.* at ¶¶ 4, 6. Accordingly, the United States does not request
13 specific restoration damages at this time.

14 Nevertheless, to preserve the United States’ ability to seek restoration
15 damages, the Court should find that, if remediation is necessary, the United States
16 is entitled to the reasonable costs of removing structures and restoring the land to
17 its natural state. Such costs would be reasonable in relation to Defendant’s conduct
18 if it is determined that Defendant left the Subject Property in such a degraded state
19 that significant expenses are required to restore it. Because Defendant has refused
20 to participate in this case, CRIT will be left with the task of determining the extent
21 of restoration required and carrying it out. And the United States, on behalf of
22 CRIT, would be entitled to recover the reasonable costs of doing so and reimburse
23 CRIT for such expense. Accordingly, the United States requests that the Court
24 retain jurisdiction so that, if restoration costs are necessary, it may file the
25 appropriate motion, with supporting declarations, seeking a specific amount in
26 restoration damages. *See, e.g., Flynn v. Angelucci Bros & Sons, Inc.*, 448 F. Supp.
27 2d 193, 197 (D.D.C. 2006) (granting default judgment “without prejudice to the
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right of plaintiffs to seek recovery of any” additional damages); *U.A. Local 393 Pension Fund v. Blue Star Plumbing, Inc.*, No. 21-CV-04265, 2022 WL 2288931, *5 (N.D. Cal. Jan. 14, 2022) (retaining jurisdiction after default judgment that granted damages “pending completion of the audit so that the judgment may be amended, if appropriate, to reflect the correct amount due”); *Constr. Laborers Trust Funds for S. Cal. Admin. Co. v. United Constr. & Maint. Inc.*, No. 2:14-CV-03483, 2015 WL 13915733, *8 (C.D. Cal. Apr. 1, 2015) (same).

4. *The likelihood of a dispute of material fact is minimal.*

The fifth *Eitel* factor examines the likelihood of a dispute between the parties regarding the material facts in the case. When there is an entry of default, a defendant is “deemed to have admitted all well-pleaded factual allegations” in the complaint. *DirecTV, Inc. v. How Huynh*, 503 F.3d 847, 851 (9th Cir. 2007). That is because, “[w]here a plaintiff has filed a well-pleaded complaint, the possibility of dispute concerning material facts is remote.” *Wecosign, Inc., v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 1082 (C.D. Cal. 2012).

Here, because Defendant has failed to answer or otherwise refute the well-pleaded facts in the Complaint, the likelihood of a dispute of material fact is minimal. Thus, all factual allegations in the Complaint should be taken as true, and this factor weighs in favor of default judgment.

5. *Defendant’s default was not due to excusable neglect.*

Where a defendant was properly served, it is reasonable to assume default was not due to excusable neglect. *See NewGen LLC v. Safe Cig, LLC*, 840 F.3d 606, 616 (9th Cir. 2016). As explained, the United States properly served Defendant here. First, the United States had the Summons, Complaint, and other necessary documents personally served on Defendant, as required by Fed. R. Civ. P. 4. ECF No. 11. Then, in accordance with Fed. R. Civ. P. 5 and L.R. 5-3.2.1,

the United States served on Defendant its *Request for Entry of Default* (ECF No. 13 at 4) and *Response to Order to Show Cause and Request for Continuance of Hearing* (ECF No. 16 at 5). Yet Defendant has not responded to the Complaint or otherwise appeared, nor has he contacted the United States about this case. And now, the United States has served Defendant with this Motion at least 28 days before the noticed hearing on the Motion. Certificate of Service, *infra*. Accordingly, the Court may reasonably assume that Defendant's default is not due to excusable neglect, and the sixth *Eitel* factor supports default judgment.

6. *Policy favoring a decision on the merits is not dispositive.*

Although policy favors cases being decided on the "merits whenever reasonably possible," "this preference, standing alone, is not dispositive." *Landstar Ranger, Inc. v. Parth Enterprises, Inc.*, 725 F. Supp. 2d 916, 922 (C.D. Cal. 2010). Where, as here, a defendant's failure to answer or otherwise respond to the complaint makes a decision on the merits impossible, "default judgment is appropriate." *Wecosign Inc.*, 845 F. Supp. 2d at 1083.

* * *

In sum, consideration of all *Eitel* factors clearly weighs in favor of default judgment in this case.

C. The United States' Requested Remedies Are Proper.

Since default judgment is appropriate, the requested remedies must be considered. Under Fed. R. Civ. P. 54(c), a remedy is proper for default judgment if it does "not differ in kind from, or exceed in amount, what is demanded in the pleadings." *See Craigslist, Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1051 (N.D. Cal. 2010). "General allegations of damages in a prayer for relief are sufficient to support a default judgment under Rule 54(c), as long as the defendant is given reasonable notice thereby of the potential amount at stake." *Anunciation v. W. Cap. Fin. Servs. Corp.*, 97 F.3d 1458 (9th Cir. 1996) (citing *Henry v. Sneiders*,

1 490 F.2d 315, 317 (9th Cir. 1974)); *Shapkin/Crossroads Prods., Inc. v. Legacy*
 2 *Home Video, Inc.*, 122 F.3d 1073, 1997 WL 556312, at *2 (9th Cir. 1997) (“So
 3 long as a plaintiff requests actual damages in its complaint, it may receive them in
 4 a default judgment even though it did not request a specific amount.”).

5 “Unlike factual allegations, allegations relating to the amount of damages
 6 are not taken as true upon a default judgment.” *TeleVideo Sys., Inc. v. Heidenthal*,
 7 826 F.2d 915, 917–18 (9th Cir. 1987) (citation omitted). Accordingly, when
 8 seeking money damages in a default judgment, a plaintiff must “prove up” its
 9 damages by “providing admissible evidence in the form of clear declarations,
 10 calculations, witness testimony, or other documents supporting its request.” *Amini*
 11 *Innovation Corp. v. KTY Int’l Mktg.*, 768 F. Supp. 2d 1049, 1053–54 (C.D. Cal.
 12 2011) (citations omitted); *TechStock USA, LLC v. RA’s Merchandise, LLC*, No. 17-
 13 CV-0853, 2017 WL 7156294, at *4 (C.D. Cal. Nov. 13, 2017). Under Fed. R. Civ.
 14 P. 55(b)(2), the Court “may rely only on a plaintiff’s declarations or order a full
 15 evidentiary hearing.” *United Specialty Ins. Co. v. E-Cig Vapor Emporium, LLC*,
 16 No. 18-CV-0002, 2018 WL 6629246, at *2 (C.D. Cal. Dec. 6, 2018); *Mesa*
 17 *Underwriters Specialty Ins. v. Paradise Skate*, No. 15-CV-01253, 2016 WL
 18 9045622, at *10 (N.D. Cal. Apr. 11, 2016) (If the amount of damages is “capable
 19 of mathematical calculation” through evidence, testimony, or written affidavit, a
 20 court may enter default judgment without a hearing on damages.).

21 1. Declaration of trespass and ejectment

22 The United States seeks a declaration that Defendant is committing a
 23 continuing trespass, and an order ejecting Defendant and his personal property
 24 from the Subject Property. These remedies do not differ in kind from or exceed
 25 what is demanded in the pleading—each was explicitly demanded in the United
 26 States’ prayer for relief. ECF No. 1 at 19–20 (requesting declaration of trespass
 27 and ejectment of Defendant from Subject Property). Thus, based on the factual
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1 allegations of the Complaint, which are taken as true upon default judgment, the
 2 United States’ requests for declaratory relief and an order of ejectment are
 3 reasonable and should be granted.⁷

4 2. Damages

5 In addition, the United States at this time seeks principal trespass damages,
 6 prejudgment interest, and postjudgment interest. As described above, the United
 7 States provides declarations supporting and attesting to the calculations of
 8 principal trespass damages and prejudgment interest. *See* Ex. 2, Carney Decl.
 9 (attesting to calculations of principal trespass damages and prejudgment interest).
 10 These well-supported calculations are based on applicable federal law. And
 11 postjudgment interest is mandatory and begins accruing after judgment is entered.
 12 Accordingly, because the United States has proven the amount of damages by
 13 providing admissible evidence, a full evidentiary hearing is not necessary or
 14 required for a default judgment granting damages. *See* Default Judgment at 2,
 15 *United States v. Thweatt*, No. 5:20-CV-1122 (C.D. Cal. Nov. 18, 2021) (granting
 16 default judgment and “all requested damages” against trespasser on the
 17 _____

18 ⁷ As mentioned above, ejectment is a separate cause of action from trespass. For
 19 ejectment of a trespasser on land owned by the United States, only the fact of
 20 trespass must be established—an equitable analysis is neither required nor
 21 appropriate. *See Osterlund*, 671 F.2d at 1268 (“Once it is established that
 22 [defendant] was a trespasser . . . the government had the right to enjoin his
 23 continued occupancy and use of that land. The courts have no power to adjust the
 24 parties’ equities in determining title to federal lands as against the federal
 25 government because, as the Supreme Court has stated, the power over the public
 26 land thus entrusted to Congress is without limitations.” (citations omitted)); *see*
 27 *also Imperial Irr. Dist.*, 799 F. Supp. at 1068 (applying equitable analysis where,
 28 unlike here, the United States’ complaint requested a preliminary ejectment and
 did not plead ejectment as a separate cause of action); *see also, e.g., United States*
v. California, 332 U.S. 19, 39–40 (1947) (explaining that United States cannot be
 “barred from enforcing its rights by reasons of principles similar to laches, estoppel
 or adverse possession”).

1 Reservation without evidentiary hearing based on declarations submitted by the
2 United States).

3 Moreover, Fed. R. Civ. P. 54(c) is satisfied because the United States' prayer
4 for relief gave Defendant "reasonable notice of the potential amount at stake." *See*
5 *Anunciation*, 97 F.3d 1458; *see also* ECF No. 1 at 19–20 (requesting fair market
6 rental value of Subject Property for the 6 years and 90 days prior to the Complaint,
7 restoration damages, prejudgment interest, and postjudgment interest, as well as
8 "such other and further relief as the Court deems just and proper"). Thus, the
9 damages sought do "not differ in kind, or exceed in amount, what is demanded in
10 the pleadings." Fed. R. Civ. P. 54(c).

11 **V. CONCLUSION**

12 For the reasons herein, the United States respectfully requests that the Court
13 enter default judgment against Defendant consistent with the proposed order
14 attached herewith.
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1 DATED: April 24, 2024

2 Respectfully submitted,

3 TODD KIM

4 Assistant Attorney General

5 /s/ Cody McBride

6 CODY MCBRIDE

7 REBECCA M. ROSS

8 United States Department of Justice

9 Environment & Natural Resources Division

Indian Resources Section

10 OF COUNSEL:

11 Karen F. Boyd

12 United States Department of the Interior

13 Office of the Solicitor

14 Indian Trust Litigation Office

L.R 11-6.1 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the United States, certifies that this brief contains 6,564 words, which:

X complies with the word limit of L.R. 11-6.1.

X complies with the page limit set by court order.

DATED: April 24, 2024

/s/ Cody McBride

CODY MCBRIDE

CERTIFICATE OF SERVICE

I certify that on April 24, 2024, true and correct copies of the Notice of Motion, Motion for Default Judgment, Memorandum of Points and Authorities (with supporting exhibits), and the Proposed Order were sent to Defendant Craig Ferguson via expedited mail to ensure delivery to the following known addresses at least 28 days prior to the June 3, 2024, hearing on this Motion:

31800 Highway 95
McCoy Subdivision, Lot #17
Blythe, CA 92225

16902 Baruna Lane
Huntington Beach, CA 92649

7651 Garden Grove Blvd.
Garden Grove, CA 92841

DATED: April 24, 2024

/s/ Katherine Shortell
KATHERINE SHORTELL